

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

DESERT FOX CUSTOM RESTORATIONS, INC.,  
A New Mexico Corporation,

Plaintiff,

v.

No. 2:19-cv-01150 KRS/CG

CWS MARKETING GROUP, INC., a Virginia Corporation;  
THE ACCURATE GROUP OF TEXAS, LLC, a Texas LLC; and  
WESTCOR LAND & TITLE INC., A Florida licensed Insurance Co.,

Defendants.

**CWS MARKETING GROUP, INC.’S**  
**ANSWER TO COMPLAINT**

COMES NOW the Defendant, CWS Marketing Group Inc. (hereinafter “CWS”) by and through its counsel of record Butt Thornton & Baehr PC (Michael P. Clemens) and for its Answer to Plaintiff’s Complaint states as follows:

**I. Parties**

1. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 1 of the Plaintiff’s Complaint (hereinafter “Complaint”) and therefore denies the same and demands strict proof thereof.
2. CWS admits the allegations contained in Paragraph 2 of the Complaint.
3. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 3 of the Complaint and therefore denies the same and demands strict proof thereof.
4. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 4 of the Complaint and therefore denies the same and demands strict proof thereof.
5. Paragraph 5 of the Complaint contains only allegations of law to which no response is

required. To the extent a response is required, CWS denies any allegation in Paragraph 5 that is contrary to law.

6. CWS denies the allegations contained in Paragraph 6 of the Complaint.

## **II. Jurisdiction and Venue**

7. CWS denies the allegation contained in Paragraph 7 of the Complaint.
8. CWS denies the allegation contained in Paragraph 8 of the Complaint.
9. CWS denies the allegation contained in Paragraph 9 of the Complaint.

## **III. Factual Background**

10. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Complaint and therefore denies the same and demands strict proof thereof.
11. CWS admits the allegations contained in Paragraph 11 of the Complaint.
12. CWS admits the allegations contained in Paragraph 12 of the Complaint.
13. The documents attached as Exhibits A, B, and C speak for themselves and no response by CWS is required. CWS admits the remaining allegations contained in Paragraph 13 of the Complaint.
14. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 14 of the Complaint and therefore denies the same and demands strict proof thereof.
15. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 15 of the Complaint and therefore denies the same and demands strict proof thereof.
16. The document attached as Exhibits D speaks for itself and no response by CWS is

required. CWS denies the remaining allegations contained in Paragraph 16 of the Complaint.

17. The document attached as Exhibits E speaks for itself and no response by CWS is required. CWS denies the remaining allegations contained in Paragraph 17 of the Complaint.
18. CWS denies the allegations contained in Paragraph 18 of the Complaint.
19. CWS denies the allegations contained in Paragraph 19 of the Complaint.
20. The documents attached as Exhibits G and H speak for themselves and no response is required. CWS denies the remaining allegations contained in Paragraph 20 of the Complaint.
21. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 21 of the Complaint and therefore denies the same and demands strict proof thereof.
22. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 22 of the Complaint and therefore denies the same and demands strict proof thereof.
23. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 23 including its subparts A-F of the Complaint and therefore denies the same and demands strict proof thereof.
24. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 24 including its subparts a and b of the Complaint and therefore denies the same and demands strict proof thereof.
25. The document attached as Exhibit I speaks for itself and no response is required. CWS is

without sufficient information to admit or deny the remaining allegations contained in Paragraph 25 of the Complaint and therefore denies the same and demands strict proof thereof.

26. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 26 of the Complaint and therefore denies the same and demands strict proof thereof.

27. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 27 of the Complaint and therefore denies the same and demands strict proof thereof.

28. The document attached as Exhibit J speaks for itself and no response is required. CWS is without sufficient information to admit or deny the remaining allegations contained in Paragraph 28 of the Complaint and therefore denies the same and demands strict proof thereof.

29. The document attached as Exhibit K speaks for itself and no response is required. CWS is without sufficient information to admit or deny the remaining allegations contained in Paragraph 29 of the Complaint and therefore denies the same and demands strict proof thereof.

30. The document attached as Exhibit L speaks for itself and no response is required. CWS admits that an inadmissible Rule 11- 408 settlement offer was made to Defendants and CWS hereby requests that such settlement demand be stricken from the pleadings in this matter.

31. CWS denies the allegations contained in Paragraph 31 of the Complaint.

32. CWS denies the allegations contained in Paragraph 32 of the Complaint.

**IV. CWS Response to Count I.**

- 33. In response to Paragraph 33 of the Complaint CWS reasserts each of its responses above.
- 34. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 34 of the Complaint and therefore denies the same and demands strict proof thereof.
- 35. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 35 of the Complaint and therefore denies the same and demands strict proof thereof.
- 36. CWS denies the allegations contained in Paragraph 36 of the Complaint.
- 37. CWS denies the allegations contained in Paragraph 37 of the Complaint.
- 38. CWS denies the allegations contained in Paragraph 38 of the Complaint.
- 39. CWS denies the allegations contained in Paragraph 39 of the Complaint.

**V. CWS Response to Count II.**

- 40. In response to Paragraph 40 of the Complaint CWS reasserts each of its responses above.
- 41. Paragraph 41 of the Complaint contains only allegations of law to which no response is required. To the extent a response is required any allegation contrary to law is denied.
- 42. CWS denies the allegations contained in Paragraph 42 of the Complaint.
- 43. Paragraph 43 of the Complaint contains only allegations of law to which no response is required. To the extent a response is required, the allegation is denied.
- 44. Paragraph 44 of the Complaint contains only allegations of law to which no response is required. To the extent a response is required, the allegation is denied.
- 45. CWS denies the allegations contained in Paragraph 45 of the Complaint.

- 46. CWS denies the allegations contained in Paragraph 46 of the Complaint.
- 47. CWS denies the allegations contained in Paragraph 47 of the Complaint.
- 48. CWS denies the allegations contained in Paragraph 48 of the Complaint.

**VI. CWS Response to Count III.**

- 49. In response to Paragraph 49 of the Complaint CWS reasserts each of its responses above.
- 50. Paragraph 50 of the Complaint contains only allegations of law to which no response is required. To the extent a response is required CWS denies any allegation that is contrary to law.
- 51. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 51 of the Complaint and therefore denies the same and demands strict proof thereof.
- 52. CWS is without sufficient information to admit or deny the allegations contained in Paragraph 52 of the Complaint and therefore denies the same and demands strict proof thereof.
- 53. Paragraph 53 of the Complaint contains an allegation of law to which no response is required. To the extent a response is required CWS denies any allegation that is contrary to law. CWS denies the remaining allegations contained in Paragraph 53 of the Complaint.
- 54. CWS denies the allegations contained in Paragraph 54 of the Complaint.
- 55. CWS denies the allegations contained in Paragraph 55 of the Complaint.
- 56. CWS denies the allegations contained in Paragraph 56 of the Complaint.
- 57. CWS denies the allegations contained in Paragraph 57 of the Complaint.

**VII. CWS Response to Count IV.**

- 58. In response to Paragraph 58 of the Complaint CWS reasserts each of its responses above.
- 59. Paragraph 59 of the Complaint contains only allegations of law to which no response is required. To the extent a response is required CWS denies any allegation that is contrary to law.
- 60. Paragraph 60 of the Complaint contains only allegations of law to which no response is required. To the extent a response is required CWS denies any allegation that is contrary to law.
- 61. Paragraph 61 of the Complaint contains only allegations of law to which no response is required. To the extent a response is required CWS denies any allegation that is contrary to law.
- 62. CWS denies the allegations contained in Paragraph 62 of the Complaint.
- 63. CWS denies the allegations contained in Paragraph 63 of the Complaint.

**VIII. CWS Response to Count V.**

- 64. In response to Paragraph 64 of the Complaint CWS reasserts each of its responses above.
- 65. CWS denies any allegations made against it in Paragraph 65 of the Complaint.
- 66. CWS denies any allegations made against it in Paragraph 66 of the Complaint.
- 67. CWS denies any allegations made against it in Paragraph 67 of the Complaint.
- 68. CWS denies any allegations made against it in Paragraph 68 of the Complaint.
- 69. CWS denies any allegations made against it in Paragraph 69 of the Complaint.
- 70. CWS denies any allegations made against it in Paragraph 70 of the Complaint.

**IX. CWS Response to Count VI.**

- 71. In response to Paragraph 71 of the Complaint CWS reasserts each of its responses above.

- 72. Paragraphs 72, 73, 74, 75, 76, 77, and 78 of the Complaint appear to be directed at other parties and no response is required by CWS. To the extent a response is required, CWS states that it is without sufficient information to admit or deny the allegations contained in Paragraphs 72, 73, 74, 75, 76, 77, and 78 of the Complaint and therefore denies the same and demands strict proof thereof.
- 73. Paragraph 79 is a request for a jury trial by Plaintiff and no response by CWS is required.
- 74. The Complaint contains a “Prayer for Relief” to which no response is required. To the extent a response is required, CWS denies the relief requested.
- 75. CWS has attempted to respond to every allegation made in the Complaint. Any allegation not responded to is hereby denied.

**Affirmative Defenses**

- A. Plaintiff’s Complaint fails to state a claim upon which relief can be granted.
- B. As a separate and alternative affirmative defense CWS states that because the property at issue is located in Texas, this Court lacks subject matter jurisdiction.
- C. As a separate and alternative affirmative defense CWS states that this Court lacks personal jurisdiction over Defendant CWS Marketing Group Inc.
- D. As a separate and alternative affirmative defense, CWS states that this Court is an improper Venue to decide this matter pursuant to 28 USCA Section 1391(b).
- E. As a separate and alternative affirmative defense CWS states that Plaintiff’s negligence and/or bad faith caused its own damages thereby barring Plaintiff’s recovery from Defendant CWS or Plaintiff’s conduct reduces Plaintiff’s recovery from CWS pursuant to the doctrine of comparative fault or comparative bad faith.
- F. As a separate and alternative affirmative defense CWS states that other defendants or



non-party tortfeasors caused Plaintiff's damages thereby barring Plaintiff's recovery from Defendant CWS or otherwise reducing Plaintiff's recovery from CWS pursuant to the doctrine of comparative fault.

- G. As a separate and alternative affirmative defense Defendant CWS is entitled to recover its attorney's fees and costs pursuant to the Unfair Practices Act.
- H. As a separate and alternative affirmative defense, CWS states that the allegations contained in Plaintiff's Complaint fails to justify an award of punitive damages.
- I. As a separate and alternative affirmative defense, CWS states that Plaintiff's claim for punitive damages is barred by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, and Section 13, Article 2, and Section 18, Article 2, of the Constitution of the State of New Mexico in that, under the facts of this case, any award of punitive damages is not justified and will constitute a denial of equal protection, a denial of due process, and/or the imposition of an excessive fine.
- J. As a separate and alternative affirmative defense, CWS states that the Plaintiff failed to mitigate its damages.

Respectfully submitted:

BUTT THORNTON & BAEHR PC

/s/ Michael P. Clemens

Michael P. Clemens  
Attorneys for Defendant CWS Marketing  
P.O. Box 3170  
Albuquerque, NM 87190  
(505) 884-0777  
[mpclemens@btblaw.com](mailto:mpclemens@btblaw.com)

I HEREBY CERTIFY that the foregoing was electronically filed through the Federal Court efilng system which caused the following counsel to be served by electronic means, and that a courtesy copy was emailed to counsel on the 18th day of February, 2020:

John R. Beauvais

[Lincolnlawyer575@gmail.com](mailto:Lincolnlawyer575@gmail.com)

Charles K. Purcell

[kpurcell@rodey.com](mailto:kpurcell@rodey.com)

Mariposa Padilla Sivage

[mps@sutinfirm.com](mailto:mps@sutinfirm.com)

*/s/ Michael P. Clemens*

---

Michael P. Clemens